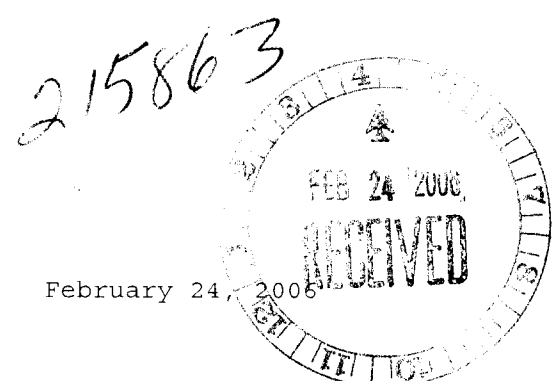


**JOHN D. HEFFNER, PLLC**  
1920 N STREET, N.W.  
SUITE 800  
WASHINGTON, D.C. 20036  
(202) 263-4180  
FAX (202) 296-3939  
j.heffner@verizon.net

**ORIGINAL**



BY HAND

February 24, 2006

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street  
Washington, D.C. 20423-0001

**RE:** STB Finance Docket No. 34813, New York New Jersey  
Rail LLC and New York Cross Harbor Railroad Terminal  
Corp -- Transaction within a corporate family exemption

**Motion to hold in abeyance**

Dear Mr. Williams:

I am writing on behalf of Petitioners New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp. ("NYNJRR", "NYCH," and collectively "Petitioners") in connection with the above-captioned exemption proceeding. By letter dated January 5, 2006, I had asked the Board to hold in abeyance until further notice the corporate family transaction request previously filed with the Board on December 22, 2005. On January 10, 2006, the Board served a decision granting Petitioners' request.

Since then, Petitioners have met with representatives for Consolidated Rail Corporation ("Conrail") in an effort to reach an agreement to let this transaction go forward. Conrail has agreed to withdraw its opposition to this transaction insofar as it will allow NYCH to transfer to NYNJRR the operating rights and common carrier authority and obligations of NYCH. Accordingly, NYCH submits with this letter an amended exemption notice reflecting the agreement reached with Conrail.

On February 3, 2006, the New York City Economic Development Corporation ("NYCEDC") filed its own "Motion to Hold in Abeyance" in the above-captioned proceeding. That Motion restates the substance of a letter request that NYCEDC had previously submitted to the Board on December 28, 2005, seeking to "ensure that the City's rights pursuant to the City Permit (for the use of the Bush Terminal Yards, the Float Bridge facility, and related tracks at the Harborside Industrial Center) were not compromised, altered or otherwise modified by the Notice of Exemption." NYCEDC Motion at 3. NYCEDC then asserts that the City permit may not be assigned without the acknowledgement of or compliance with certain requirements identified in the Motion. NYCEDC Motion at 3. NYCEDC's Motion goes on to say that EDC seeks "to ensure that the City's rights are fully complied with and are not compromised, modified, or altered in any way by the proposed transactions." Finally, NYCEDC states that it is "seeking to hold these proceedings in abeyance until it can

Hon. Vernon A. Williams

February 24, 2006  
Page two

confirm that the implementation of the proposed transactions will not impair any of the City's rights." NYCEDC Motion at 4.

When Conrail informed Petitioners of their objection to the transaction as originally structured, Petitioners immediately contacted Conrail to schedule a meeting. Conrail officials promptly arranged to meet with Petitioners and agreed to allow the transaction to proceed expeditiously subject to certain conditions and limitations. By contrast, Petitioners' several efforts to date to meet with NYCEDC officials have been unsuccessful. Petitioners are continuing to schedule a meeting and have now written a letter to NYCEDC formally requesting their consent to the assignment of the City Permit from NYCH to NYNJR. A copy of that letter is attached hereto.

In submitting this request, Petitioners are mindful of Board and Interstate Commerce Commission precedent holding that the agency does not have the jurisdiction to decide or even involve itself in commercial disputes between parties. Cf., Burlington Northern, Inc.-Trackage Rights, 347 I.C.C. 210, 213 (1974). Moreover, because Board authority is permissive, agency precedent permits the Board to grant exemptions to allow transactions to close absent an agreement between the parties. Prairie Central Ry. Co.-Acquisition & Operation, 367 I.C.C. 884-5 (1983) ("...the exemption provisions of 49 U.S.C. [10502] do not require a demonstrated ability to consummate a transaction before an exemption can be granted"). Despite NYCEDC's stated concerns, there is substantial public support for this transaction, as evidenced by the attached letter to the Board from New York State Senator Martin J. Golden. Accordingly, there is no reason why the Board cannot grant Petitioners' exemption request while Petitioners seek to satisfy NYCEDC's requirements and concerns.

Petitioners now withdraw their request to hold this matter in abeyance and ask the Board to promptly issue a decision allowing this amended transaction to close in accordance with their agreement with Conrail and notwithstanding the February 3, 2006, Motion filed by NYCEDC.

I am enclosing an original and ten copies of this letter along with a copy of this filing on a disk formatted for MS Word. Please date stamp and return one copy of this letter.

Sincerely yours,



John D. Heffner  
Counsel for Petitioners

Enclosure

cc: David Konschnik, Esq., (by fax to 565-9002)  
Jonathan Broder, Esq. (by Fax)  
Charles Spitulnik, Esq.  
Mr. James Cornell

## NEW YORK CROSS HARBOR RAILROAD TERMINAL CORPORATION

5266 Seneca Street  
West Seneca, New York 14224  
T(716)675-6001 x223 F(716)675-5434

February 23, 2005

Ms. Alice Cheng  
Cross Harbor Freight Movement  
New York City  
Economic Development Corporation  
110 William Street  
New York, NY 10038

**Re: Request for consent to assignment of license for utilization of Bush Terminal Yard and Floatbridge Facility and tracks at the Harborside Industrial Center by New York Cross Harbor Railroad Terminal Corporation**

Dear Ms. Chang:

Pursuant to the assignment provisions of the 1984 permit issued by the City of New York for the above-described railroad facilities, I am writing you on behalf of the New York Cross Harbor Terminal Railroad Corporation ("NYCH") and New York New Jersey Rail, LLC (hereafter "NYNJRR") to seek New York City Economic Development Corporation's ("NYCEDC's") consent to the transfer to NYNJRR of NYCH's rights to utilize the Bush Terminal Yard and the related Floatbridge and tracks at the Harborside Industrial Center for railroad operations.

NYCH is a short line railroad that operates in and along the Brooklyn waterfront serving 8 local customers. NYCH also provides rail customers on Long Island with a strategic connecting link to major rail connections in New Jersey. Utilizing a fleet of barges, NYCH floats rail traffic between Brooklyn and Long Island to competitive rail connections with both Norfolk Southern Railroad and CSX Transportation for movement to or from points elsewhere in the United States.

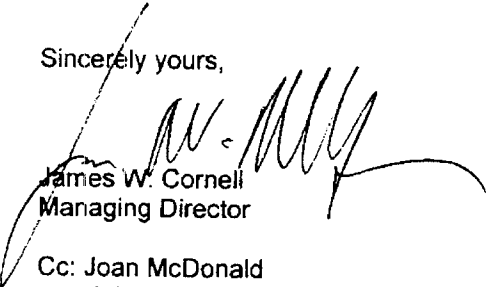
As you may recall, NYCH was formerly owned by New York Regional Rail Corp. ("NYRR"), which had been owned and managed by persons with credentials and relationships that were unacceptable to the NYCEDC. About a year ago, new investors acquired a majority ownership in NYRR, terminated prior management, and provided the railroad with substantial capital to address a backlog of deferred maintenance and unpaid obligations. As the new management attempted to resolve a couple of decades of financial, operating, and political problems, it became apparent that it would be necessary to spin off NYCH's operations and assets to a new entity that would not be burdened by NYRR's and NYCH's prior bad reputation. That spin off of the capital stock of NYCH to private ownership was consummated in November 2005. NYCH's new management then directed its regulatory counsel to submit a filing to the federal Surface Transportation Board ("STB") to allow a new operating entity, New York New Jersey Rail LLC to acquire NYCH's assets and operations. New management believes that this new structure will enable it to attract the investment funds needed to put the Cross Harbor Railroad operation in a good state of repair to provide customers with viable rail service.

Shortly after NYCH and NYNJR filed its request with the STB, NYCEDC asked that agency to hold this matter in abeyance so it could assure itself that this transaction would not, in its words, "modify, alter, or otherwise compromise the City's rights pursuant to a permit dated as of September 1, 1984," that relates to the rail facilities NYCH leases from the NYCEDC. NYCEDC correctly noted that Consolidated Rail Corporation ("Conrail") had also filed a request with the STB to stay this matter until it could satisfy itself as to certain issues. Upon receipt of Conrail's concerns, NYCH and NYNJR asked the STB to hold in abeyance its request so that it could meet with Conrail to resolve matters of mutual concern. Unlike with NYCEDC, NYCH was able to meet promptly with Conrail and begin a discussion leading to a resolution of such concerns. By contrast, NYCH and NYNJR have not enjoyed the same success in obtaining a meeting with NYCEDC officials so that matters of mutual concern can be resolved.

Accordingly, NYCH and NYNJR request a) that NYCEDC promptly grant its consent to the transfer of the license for use of the Bush Terminal and related rail infrastructure to NYNJR, and b) agree to schedule a meeting with NYCEDC officials to enable us identify and work to resolve any issues that stand as an impediment to our each enjoying a productive relationship with one another.

The operational requirements and financial resources necessary to continue the Cross Harbor Railfloat service are urgent. In the absence of our ability to consummate the transaction described, service to Brooklyn customers may be adversely affected and this vital link from New Jersey to Brooklyn and beyond may be disrupted. We have directed our legal counsel to proceed immediately with seeking regulatory approval for the transaction at the STB, and ask NYCEDC to act promptly to meet with us to resolve the commercial matters existing between the railroad and the NYCEDC. Please contact the undersigned at the number above at your earliest convenience to discuss this important matter and coordinate a date to meet.

Sincerely yours,



James W. Cornell  
Managing Director

Cc: Joan McDonald  
John Heffner, Esq.

**CHAIRMAN**  
AGING  
**COMMITTEE MEMBER**  
BANKS  
CODES  
CRIME VICTIMS, CRIME  
& CORRECTION  
EDUCATION  
INVESTIGATIONS  
& GOVERNMENT OPERATIONS  
TOURISM, RECREATION &  
SPORTS DEVELOPMENT  
VETERANS, HOMELAND SECURITY  
& MILITARY AFFAIRS

THE SENATE  
STATE OF NEW YORK



**MARTIN J. GOLDEN**  
Senator, 22nd District

**ALBANY OFFICE:**  
ROOM 946  
LEGISLATIVE OFFICE BUILDING  
ALBANY, NEW YORK 12247  
(518) 455-2730  
FAX: (518) 436-6910  
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(718) 238-6044  
FAX: (718) 238-6170  
**DISTRICT OFFICE:**  
3610 QUENTIN ROAD  
BROOKLYN, NEW YORK 11234  
(718) 627-3659  
FAX: (718) 627-3820  
**E-MAIL ADDRESS:**  
GOLDEN@SENATE.STATE.NY.US

February 23, 2006

Hon. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street  
Washington, D.C. 20423-0001

Re: Finance Docket No. 34813, New York New Jersey Rail LLC and New York Cross  
Harbor Railroad Terminal Corp.- Corporate Family Transaction Exemption

Dear Mr. Williams:

I am writing to express my support for a request filed with your agency on December 22, 2005, by New York New Jersey Rail LLC (NYNJ) in the above-captioned proceeding. NYNJ seeks the Board's approval to acquire the assets and rail operations of New York Cross Harbor Railroad Terminal Corp ("NYCH").

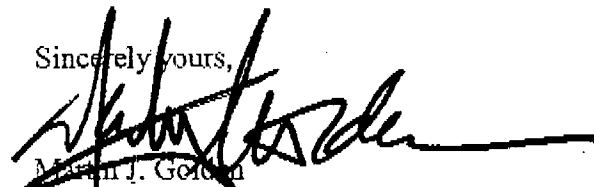
I understand that NYCH's majority owner recently established NYNJ to acquire NYCH's assets and rail operations in order to rehabilitate NYCH's poor public image, to attract investment and new customers, and to resolve outstanding local concerns. Granting NYNJ's exemption request will permit this company to rehabilitate this rail property and provide stability for the rail service that NYCH has historically provided customers located along the Brooklyn waterfront.

I realize that the Board in considering a transaction involving the transfer of rail lines must take into account the objections and supporting statements submitted by local governments and their elected leaders.

February 23, 2006  
Hon. Vernon A. Williams  
Page 2

As this railroad provides a vital link for competitive rail service into New York City, I respectfully request that the Board consider and grant NYNJ's request to acquire NYCH's assets and operations so that the proposed transaction may be consummated.

Sincerely yours,



Martin J. Golden  
State Senator, 22nd District

cc: Honorable Douglas Buttrey  
Honorable Francis Mulvey

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34813

NEW YORK NEW JERSEY RAIL LLC AND  
NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP  
-- TRANSACTION WITHIN A CORPORATE FAMILY EXEMPTION --

AMENDMENT TO  
VERIFIED NOTICE OF EXEMPTION  
UNDER 49 CFR 1180.2(d)(3)

Respectfully submitted,  
John D. Heffner  
John D. Heffner, PLLC  
1920 N Street, N.W.  
Suite 800  
Washington, D.C. 20036  
Counsel for Petitioners

Dated: February 24, 2006

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34813

NEW YORK NEW JERSEY RAIL LLC AND  
NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP  
-- TRANSACTION WITHIN A CORPORATE FAMILY EXEMPTION --

AMENDMENT TO  
VERIFIED NOTICE OF EXEMPTION  
UNDER 49 CFR 1180.2(d)(3)

Comes now New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp (individually referred to as "NYNJRR" and "NYCH" and collectively as "Petitioners"), by and through Counsel, and file this amendment to the Verified Notice of Exemption originally filed on December 22, 2005.<sup>1</sup> Petitioners state as follows:

1. Pursuant to the provisions of §1180.4(g) of the Board's Railroad Consolidation Rules, 49 C.F.R. 1180, Petitioners hereby give notice of a transaction, which qualifies for exemption under §1180.2(d)(3) as a transaction within a corporate family.

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<sup>1</sup> By motion filed January 5, 2006, petitioners asked the Board to hold this proceeding in abeyance until further notice. The Board granted that request in a decision served January 10, 2006.



2. NYNJR is a newly formed limited liability company established and owned by Mid Atlantic New England Rail, LLC, ("MANER") an entity owned and controlled by Gordon Reger ("Reger"), an individual. MANER established NYNJR to facilitate the acquisition of and/or investment in short line and regional railroad companies such as NYNJR.

3. NYCH is a class III short line railroad common carrier within the meaning of the ICC Termination Act and the Board's decisions thereunder. Entities controlled by Mr. Reger own a majority of NYCH's outstanding stock and, by reason of that ownership, indirectly control NYCH. Mr. Reger currently controls one other short line common carrier railroad subject to the Board's jurisdiction, New Amsterdam & Seneca Railroad Company, LLC.<sup>2</sup> Originally established in 1983, NYCH owns, leases,<sup>3</sup> and operates railroad tracks and facilities at Greenville, Jersey City, NJ, and Brooklyn, NY, and operates between these points by means of a car float across New York Harbor. A copy of NYCH's operating authority is attached to this notice as Exhibit A.

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<sup>2</sup> The Board exempted Reger's common control of these two entities in STB Finance Docket No. 34825, Gordon Reger-Continuance in Control Exemption-New Amsterdam & Seneca Railroad Company, LLC.

<sup>3</sup> As relevant to this proceeding, NYCH leases the Greenville (NJ) Yard of Consolidated Rail Corporation ("Conrail") pursuant to an agreement dated December 15, 2002.

4. Petitioners propose to undertake the following corporate family transaction that they believe is subject to the Board's jurisdiction and will require Board approval absent an exemption. NYCH will transfer its operating rights and common carrier obligations to NYNJR, a newly established limited liability company. NYNJR will assume all of NYCH's rights and obligations to provide service as a common carrier and will provide the railroad service historically provided by NYCH.

5. Under §1180.2(d)(3) of the Board's consolidation rules, certain transactions are automatically exempt from the prior approval requirements for common control under 49 U.S.C. 11323. Specifically, §1180.2(d)(3) exempts transactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family.

6. The proposed corporate changes identified in this notice will be limited to entities controlled by Mr. Reger. The result of this transaction will be for NYCH to transfer to NYNJR those rights and obligations owned by NYCH and necessary for it to provide service as a common carrier railroad.<sup>4</sup> This change will not adversely affect service levels, result in any

---

<sup>4</sup> NYCH will not transfer to NYNJR its Greenville Yard lease until it obtains Conrail's consent. Furthermore, NYCH's ability to transfer its assets to NYNJR is subject to the terms of its 2002 Greenville Yard lease with Conrail and its Settlement Agreement with Conrail. However, Conrail has withdrawn its opposition to that part of NYNJR's request insofar as it seeks to transfer to NYNJR the operating and common carrier authority and obligations of NYCH. See letter from Jonathan Broder of Conrail attached hereto as Exhibit B.

operational changes on the subject lines, or affect the competitive balance with carriers outside the corporate family.

7. In order to claim the §1180.2(d) exemption, §1180.4(g) requires the filing of a verified notice of exemption furnishing the information requested in §§1180.6(a)(1)(i)-(iii), (a)(5), (a)(6) and (a)(7)(ii) of those rules.

8. Information about the parties §1180.6(a)(1):

Name: New York New Jersey Rail, LLC

Address: 2730 Transit Road  
West Seneca, NY 14224

Telephone: (716) 675-1200

Name: New York Cross Harbor Railroad Terminal Corp

Address: 2730 Transit Road  
West Seneca, NY 14224

Telephone: (716) 675-1200

Legal counsel to whom questions should be addressed:

John D. Heffner, Esq.  
John D. Heffner, PLLC  
1920 N Street, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 263-4180

Schedule for consummation:

Sometime on or after March 3, 2006, at least seven days from the date of this notice.

Purpose(s) to be accomplished by the transaction:

The proposed transfer of NYCH's rights and obligations to provide service as a common carrier to a new entity

[NYNJRR] will facilitate better access to equity and debt capital which will enable the improvement of the Greenville, NJ, and Brooklyn, NY, rail yards, and enable the improvement of the condition of NYCH's equipment, create a safer working environment for railroad employees, and increase the railroad's ability to serve the freight transportation needs of the public in the New York, New Jersey, New England, and Mid Atlantic markets.<sup>5</sup>

State(s) where proposed operations will be conducted  
(§1180.6(a)(5)):

New Jersey and New York

Map showing relationship between NYCH and NYNJRR:  
§1180.6(a)(6)):

Attached hereto as Exhibit C.

Copy of agreement. §1180.6(a)(7)):

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<sup>5</sup> On numerous prior occasions the Board has exempted similar transactions involving the "spin off" or transfer of railroad operations, common carrier obligations, railroad assets, and leased lines from one commonly owned short line rail carrier to a newly established or existing corporate sibling. See, e.g., Maryland and Pennsylvania Railroad Company and Yorkrail, Inc.-Intracorporate Family Transaction Exemption (STB FD No. 33815, served Dec. 13, 1999) (permitting the physical assets of two short line rail carrier affiliates being merged to transfer their respective rail lines to two newly formed limited liability companies under common control by the surviving corporate entity and rail carrier; Pioneer RailCorp and Michigan Southern Railroad Company-Corporate Family Transaction Exemption (STB FD No. 33941, served October 10, 2000) (transfer of operating leases to new affiliates); and Sierra Railroad Company-Corporate Family Transaction Exemption-Yolo Shortline Railroad Company (STB FD No. 34360, served June 23, 2003) (transfer of common carrier rights and obligations). Among the reasons cited by the petitioners and accepted by the Board in past cases have included replacement of existing financing with new credit arrangements intended to provide increased financial liquidity and flexibility, simplification of corporate structure and management structure, preservation of favorable financing arrangements available to one corporate sibling, and improved operational efficiency. Bethlehem Steel Corporation, et al, Corporate Family Transaction Exemption, (STB FD No. 34101, served October 25, 2001); Maryland and Pennsylvania Railroad Company and Yorkrail, Inc.-Intracorporate Family Transaction Exemption (STB FD No. 33815, served Dec. 13, 1999); and Toledo, Peoria & Western Railway Corporation-Corporate Family Transaction Exemption-Marksman Corporation (STB FD No. 33659).

Not applicable. As yet, there is no written agreement documenting the transaction.

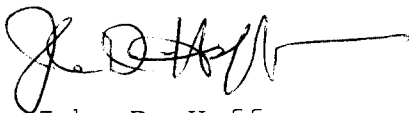
9. No labor protection is applicable to this transaction inasmuch as the only rail carriers involved are class III rail carriers. 49 U.S.C. 11326(c). Nevertheless, NYNJR will recognize the present collective bargaining unit for NYCH employees and will continue to compensate employees in accordance with the current NYCH collective bargaining agreement. In addition, NYNJR will perform pursuant to all other agreements covering or affecting rail operations including those between NYCH and its connecting railroads, NYCH and its customers, and NYCH and the City of New York.

10. The proceeding is exempt from environmental review under 49 CFR 1105.6(c)(2)(i) because the proposed action will not cause any operational changes that exceed the threshold established in §1105.7(e)(4) or (5).

In addition, this proceeding is exempt from historic review under §1105.8(b)(1). Under this section a sale, lease, or transfer of rail line is exempt if rail operations will continue; further Surface Transportation Board approval is

required to abandon service, and there are no plans to dispose of or alter properties subject to Board jurisdiction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J D Heffner', with a long horizontal flourish extending to the right.

John D. Heffner  
John D. Heffner, PLLC  
1920 N Street, N.W.  
Suite 800  
Washington, D.C. 20036  
Counsel for Petitioners

Dated: February 24, 2006

## **EXHIBIT A**

SERVICE DATE

JUL 15 1983

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 30183

NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP. EXEMPTION FOR  
OPERATION AND ISSUANCE OF SECURITIES

No. AB-219 (Sub-No. 2)

NEW YORK DOCK RAILWAY -- ABANDONMENT -- KINGS COUNTY, NY

Decided: July 8, 1983

By application filed June 3, 1983, the New York Cross Harbor Railroad Terminal Corp. (NYCH) seeks a certificate of public convenience and necessity under 49 U.S.C. 10901 to operate a terminal railroad in the New York, NY area. NYCH also seeks (1) an exemption to issue securities; (2) a waiver of filing fees; and (3) a waiver of any public hearing. In addition, NYCH filed a petition on May 3, 1983 seeking waiver of environment and energy data required under 49 C.F.R. 1150.7. In the alternative NYCH seeks an exemption under 49 U.S.C. 10505. The Brotherhood of Locomotive Engineers (BLE) protests the application. The New York Department of Transportation (NYDOT) has filed comments on the proposal. Numerous local businesses and governmental bodies have filed letters in support of the proposal.

NYCH seeks authority to conduct a rail and marine service in the Borough of Brooklyn, NY and between Brooklyn, NY and Greenville Yard in Jersey City, NJ. Operations are presently conducted by the New York Dock Railway (NYD). NYD has sought, however, authority to abandon all operations in Docket No. AB-219 (Sub-No. 2), New York Dock Railway -- Abandonment -- Kings County, NY.

NYD has agreed to sell assets necessary to conduct the described operations for \$1.5 million. The assets include tracks, locomotives, a tug, floats, floatbridges, and shop, work



and office equipment. NYD will also lease 4 carfloats to NYCH. NYCH has arranged to lease (1) Consolidated Rail Corporation Greenville yard in Jersey City, NJ (2) New York City's Brooklyn Army Terminal, Bush Terminal and 63rd Street (and when completed), and (3) the Atlantic Terminal owned by the Port Authority of New York and New Jersey.

To finance the purchase of NYD assets, NYCH has reached an agreement with Northbrook Leasing (Northbrook). Under this agreement, Northbrook will advance \$1.5 million to purchase the NYD assets. The property will be leased to NYCH for 5 years. At the end of this period NYCH will receive title to the assets from Northbrook for a nominal fee. NYCH has also arranged a loan of \$300,000 from the National Bank of North America for working capital. Both agreements will require NYCH to issue promissory notes.

The Commission may begin an exemption proceeding on its own motion. 49 U.S.C. 10505(b). While NYCH has applied for authority to operate under 49 U.S.C. 10901, it has alternatively requested an exemption. It is appropriate to treat its application as a petition for exemption from 49 U.S.C. 10901 under 49 U.S.C. 10505.1/ We also note that under the terms of the loan agreement, Northbrook will acquire title to various NYD assets including "track" located at various terminal facilities. Commission authorization is required if a non-carrier acquires rail line unless the acquisition involves spur, industrial, team, switching, or side tracks and the tracks are located or intended to be located entirely in one State (49 U.S.C. 10907). Because it is unclear whether Northbrook's track acquisition is within

1/ We will dismiss NYCH's petitions to waive: (1) environment and energy data under 49 C.F.R. 1150.7 because this regulation is not applicable in exemption proceedings; (2) oral hearing because oral hearings are generally not required in exemption proceedings and no need has been shown for one here; and (3) filing fees because exemption petitions do not require any fee. NYCH's fee will be refunded.

our jurisdiction, on our own motion we will initiate a proceeding to exempt Northbrook from 49 U.S.C. Subtitle IV, and will consider this exemption in this decision.

Pursuant to 49 U.S.C. 10505, the Commission shall exempt a transaction when it finds that (1) continued regulation is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

The rail transportation policy will be fostered by the proposed exemptions. Exemption will minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, and reduce regulatory barriers for entry into and exit from the industry.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Exemption will merely allow NYCH to substitute its services for those currently provided by NYD. Exemption will also further the interest of existing shippers by assuring continued service over lines which otherwise would be subject to abandonment. We note that numerous shippers support this proposal.<sup>2/</sup> Since we have determined that regulation is not necessary to protect shippers from an abuse of market power, it is not necessary to consider whether the transactions are of limited scope. However, we note that the operation is limited to small sections of Brooklyn and Jersey City.<sup>3/</sup>

2/ Monarch Wine Co., Inc.; Consolidated Edison Company of New York, Inc.; Gusseo Manufacturing, Inc.; Cumberland Parking Corporation; New York Rail Car Corporation; Gem Parking Corporation; Tri-Borough Transportation Corporation; Express Haulage Corporation; Davidson Pipe Supply Co., Inc.; 73 businesses represented by Southwest Brooklyn Industrial Development Corp.; the Brooklyn Chamber of Commerce; and many businesses in Brooklyn by the Borough of Brooklyn.

3/ NYDOT has filed comments addressing NYCH's ability to perform the described services and assume certain NYD contractual obligations. NYDOT has not demonstrated that exemption should be denied. In light of NYD's announced intention to abandon this line and the absence of any other substitute rail carriers, we continue to conclude that exemption should be granted.

The exemption here will enable NYCH to substitute its services for NYD. Accordingly, NYD's abandonment application is no longer appropriate and will be dismissed.

BLE requests that the Commission impose the conditions contained in New York Dock Ry. - Control - Brooklyn Eastern Dist. 360 I.C.C. 60 (1979) and require NYCH to grant first preference to NYD and Brooklyn Eastern District Terminal employees. Under 49 U.S.C. 10505(g) we cannot relieve a carrier of its obligation to protect employees. The imposition of employee protective conditions in proceedings under 49 U.S.C. 10901 is discretionary. No need has been shown for their imposition.<sup>4/</sup>

Our initial review of the proposal indicates that the exemptions will not affect either the quality of the human environment or energy consumption.

It is ordered:

1. New York Cross Harbor Railroad Terminal Corp. is exempted from the requirements of 49 U.S.C. 10901 to conduct the described terminal railroad operations in the New York, NY area.
2. NYCH's issuance of securities under the described agreements are exempted from the requirements of 49 U.S.C. 11301.
3. Northbrook Leasing's acquisition of the described line is exempted from the requirements of 49 U.S.C. Subtitle IV.
4. Docket No. AB-219 (Sub. No. 2) New York Dock Railway -- Abandonment -- Kings County, NY, is dismissed.

<sup>4/</sup> The remaining exemptions do not involve any action for which labor protection is required.

5. NYCH's petitions for waiver filed May 3, 1983 and June 3, 1983 are dismissed.

6. Notice shall be published in the Federal Register.

7. The parties shall notify the Commission within 30 days of consummation.

8. These exemptions shall be effective on July 18, 1983.

9. Petitions to reopen must be filed by August 8, 1983.

By the Commission, Division 1, Commissioners Andre, Taylor, and Sternett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

(SEAL)

Agatha L. Mergenovich  
Secretary

## **EXHIBIT B**

**CONRAIL®**



February 22, 2006

John D. Heffner, PLLC  
1920 N Street, N.W.  
Suite 800  
Washington, D.C. 20036

**Re: New York New Jersey Rail LLC and New York Cross Harbor  
Terminal Corp. - FD Number 36633**

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Dear Mr. Heffner:

I am writing on behalf of Consolidated Rail Corporation (Conrail) to follow up our discussion at the January 13, 2006, meeting in your office between our respective clients regarding the protest and stay request Conrail filed in connection with the above-captioned Surface Transportation Board proceeding.

Conrail will agree to withdraw its opposition to that part of the request by New York New Jersey Rail, LLC (NYNJ), seeking to transfer to NYNJ the operating and common carrier authority and obligations of New York Cross Harbor Railroad (NYNJ). Of course, NYNJ's ability to consummate this transaction is subject to Conrail's rights under the 2002 lease with NYCH for Conrail's Greenville yard and the Settlement Agreement between our two clients. Accordingly, Conrail does not withdraw its opposition to NYNJ's request for an exemption from the STB authorizing the transfer of NYCH's assets to NYNJ.

By signing and returning one copy of this letter, your client acknowledges Conrail's rights as set forth in the lease and Settlement Agreement and Release.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jonathan M. Broder". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

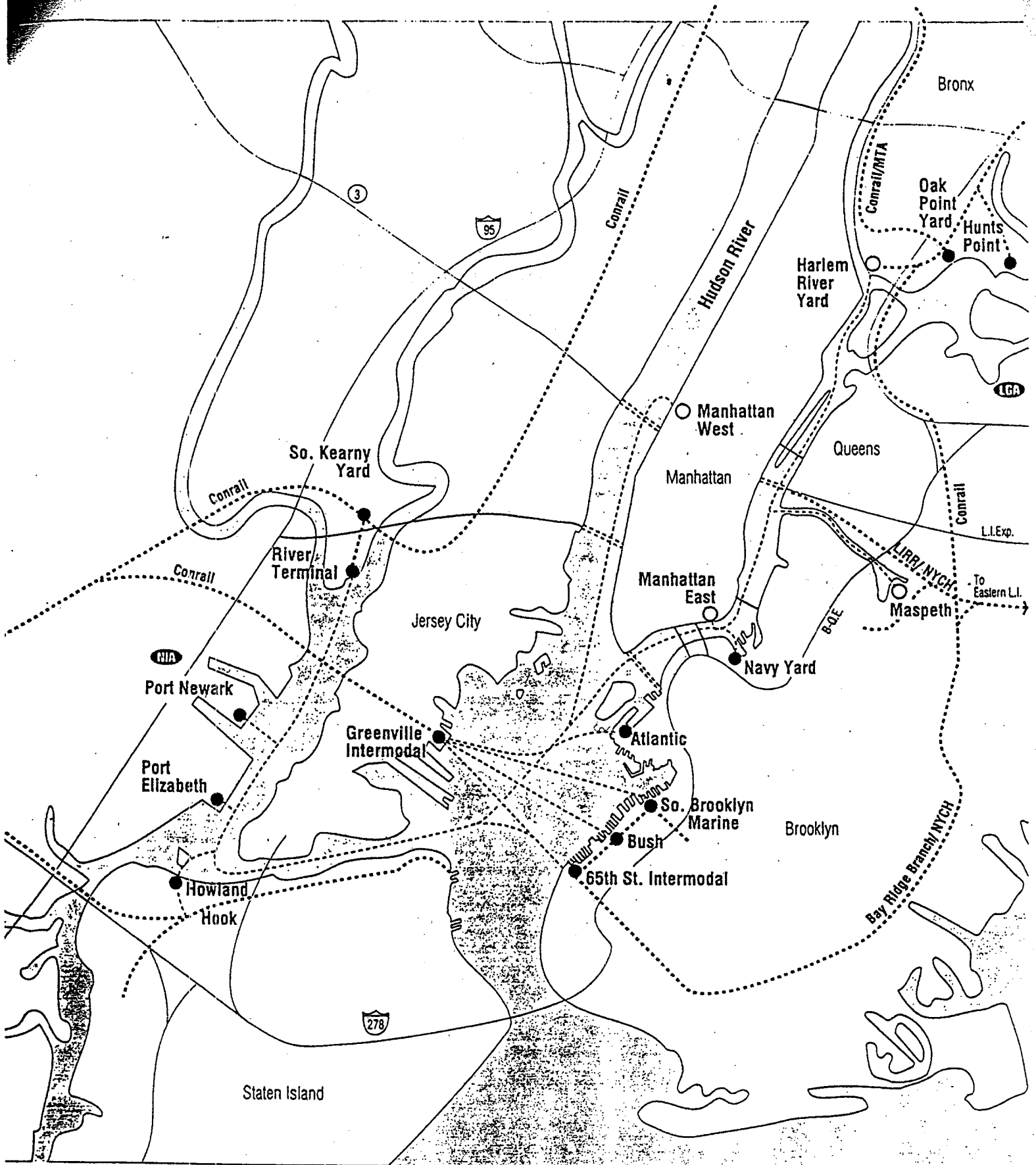
Jonathan M. Broder  
Vice President-General Counsel &  
Corporate Secretary

Agreed:

A handwritten signature in black ink, appearing to read "John D. Heffner". The signature is cursive and somewhat stylized, with a long horizontal stroke extending to the right.

## **EXHIBIT C**

To Selkirk Hurdle



Railroad Line .....  
 NYCH Float Barge .....  
 Tunnels .....  
 Existing Facility ●  
 Proposed Facility ○






CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the foregoing Amendment to Verified Notice of Exemption Under 49 CFR 1180.2(d)(3) was served on February 24, 2006 to the following:

Charles A. Spitulnik  
McLeod, Watkinson & Miller  
One Massachusetts Avenue, NW  
Suite 800  
Washington, DC 20001

Jonathan Broder  
Consolidated Rail Corporation  
2001 Market Street - 16-A  
Philadelphia, PA 19103

  
\_\_\_\_\_  
John D. Heffner

VERIFICATION

STATE OF New York )  
CITY OF Buffalo ) SS

JAMES W. CORNELL being duly sworn according to law,  
hereby deposes and states that (s)he is authorized to make the  
Verification, has read the foregoing document, and knows the  
facts asserted therein are true and accurate as stated, to the  
best of (her)his knowledge, information and belief.

Subscribed and sworn to before me, a Notary Public, in and for  
the City of Buffalo in the State of New York, this 24<sup>th</sup>  
day of February, 2006.

Linda K. Middagh  
Notary Public

My Commission expires:

**LINDA K. MIDDAGH**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 5/5/2007